

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi,*

Spl. Criminal A.T. Appeal No.168 of 2021.  
Conf. Case No.10 of 2021.

Appellants:	<ol style="list-style-type: none"> <li>1. Tariq Rahim S/o. Fazal Rahim</li> <li>2. Azhar Ahsan S/o. Muhammad Ahsan,</li> <li>3. Shahid Usman S/o. Usman Ghani</li> <li>4. Fawad Khan S/o. Abdul Qayoom,</li> <li>5. Ghulam Abbas S/o. Abbas Raza through Mr. Aamir Mansoob Qureshi, Mr.Ifthikar Ahmed and Mr.Raj Ali Wahid Kunwar, Advocates.</li> </ol>
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Complainant:	Ishtiaq Ahmed through Mr. Faisal Siddiqui, Advocate.

Spl. Criminal A.T. Appeal No.169 of 2021.

Appellants:	<ol style="list-style-type: none"> <li>1. Bilal Rasheed S/o. Muhammad Rasheed,</li> <li>2. Muhammad Daniyal S/o. Muhammad Naeem through Mr. Mahmood A. Quershi and Mr.Munir Ahmed, Advocates.</li> </ol>
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Complainant:	Ishtiaq Ahmed through Mr. Faisal Siddiqui, Advocate.

Spl. Criminal A.T. Appeal No.170 of 2021.

Appellant:	Bilal Rasheed S/o. Muhammad Rasheed through Mr. Mahmood A. Quershi, Advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

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Complainant: Ishtiaq Ahmed through Mr. Faisal Siddiqui, Advocate.

Spl. Criminal A.T. Appeal No.171 of 2021.

Appellant: Muhammad Daniyal S/o. Muhammad Naeem through Mr. Munir Ahmed, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Complainant: Ishtiaq Ahmed through Mr. Faisal Siddiqui, Advocate.

Spl. Criminal A.T. Appeal No.173 of 2021.

Appellant: Tariq Mehmood S/o. Ghulam Kibriya through Mr. Aamir Mansoob Qureshi, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Complainant: Ishtiaq Ahmed through Mr. Faisal Siddiqui, Advocate.

Dates of hearing: 04.10.2022 and 06.10.2022.

Date of Judgment: 14.10.2022.

## JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The above named appellants have preferred these appeals against the judgment dated 25.10.2021 passed by Learned Judge, Anti-Terrorism Court No.VII, Central Prison at Karachi in Special Case No.36(vii)/2020 arising out of Crime No.16 of 2018 U/s. 302/34 PPC R/w section 7 ATA 1997, Special Case No.36-A(vii)/2020 arising out of Crime No.138 of 2018 U/s. 25 Sindh Arms Act, 2013 and Special Case No.36-B(vii)/2020 arising out of Crime No.139 of 2018 U/s. 25 Sindh Arms Act, 2013 registered at P.S. Darakshan, Karachi



whereby the appellants named above were convicted and sentenced as under:-

1. The accused Muhammad Daniyal (PC) S/o. Muhammad Naeem Azam and Bilal Rasheed S/o. Muhammad Rasheed (P.C) were convicted for the offence under section 7(1) (a) of Anti-Terrorism Act, 1997 for causing death of deceased Intezar Ahmed and both the accused were sentenced to death subject to confirmation by this court along with fine of Rs.200, 000/- (Rupees two lac.) each. In case of default in payment of fine, they were each ordered to suffer S.I. for six months more.
2. The accused Muhammad Daniyal (PC) S/o. Muhammad Naeem Azam and Bilal Rasheed S/o. Muhammad Rasheed (P.C) were convicted under section 302(b) PPC r/w section 34 PPC and sentenced to death subject to confirmation by this court.
3. The accused Muhammad Daniyal (PC) S/o. Muhammad Naeem Azam was convicted for the offence under section 25 of Sindh Arms Act, 2013 and sentenced to suffer imprisonment for 10 years along with fine of Rs.50,000/- (Rupees fifty thousand). In case of default in payment of fine, he was ordered to suffer S.I. for three months more.
4. The accused Bilal Rasheed (PC) S/o. Muhammad Rasheed was convicted for the offence under section 25 of Sindh Arms Act, 2013 and sentenced to suffer imprisonment for 10 years along with fine of Rs.50,000/- (Rupees fifty thousand). In case of default in payment of fine, he was ordered to suffer S.I. for three months more.
5. The accused Tariq Mehmood S/o. Ghulam Kibriya (PI), Tariq Raheem S/o. Fazal Raheem (PI), Azhar Ahsan S/o. Muhammad Ahsan (PI), Shahid Usman S/o. Usman Ghani (HC), Fawad Khan S/o. Abdul Qayoom (PC) and Ghulam Abbas S/o. Ghulam Raza (PC) were convicted for the offence under section 7(1)(a) of ATA, 1997 r/w section 21-I of ATA, 1997 and all were sentenced to suffer R.I. for life. They were also liable to pay fine of Rs.200, 000/- (Rupees two lac) each. In case of default in payment of fine, they were ordered to suffer S.I. for six months more.
6. The accused Tariq Mehmood S/o. Ghulam Kibriya (PI), Tariq Raheem S/o. Fazal Rasheem (PI), Azhar Ahsan S/o. Muhammad Ahsan (PI), Shahid Usman S/o. Usman Ghani (HC), Fawad Khan S/o. Abdul Qayoom (PC) and Ghulam Abbas S/o. Ghulam Raza (PC) were convicted for the offence under section 302 (b) PPC r/w section 109/113 PPC and sentenced them to suffer R.I. for life and to pay fine of Rs.100,000/- (Rupees one lac) each. In case of default in payment of fine, they were ordered to suffer S.I. for six months more.





All the sentences on all accounts were ordered to run concurrently. The benefit of section 382(b) Cr.P.C. was also extended to the accused. The amount of fine shall be paid to the legal heirs of deceased u/s. 544 Cr.P.C.

2. The brief facts of the case are that on 13.01.2018 at about 2355 hours complainant Ishtiaque Ahmed recorded his 154 Cr.P.C statement at P.S Darakshan, averring therein that his son Intezar Ahmed, aged about 19 years (student at Malaysia), returned back at Karachi. On 13.01.2018 at about 05-30 p.m, in car bearing No: BLE-254 make Toyota Grandy his son left along with his friends, when at about 08.00 pm complainant was informed that his son received a bullet injury and had been shifted to JPMC. On receiving such information he along with his brother and other relatives arrived at hospital and came to know that his son had succumbed to his injuries. After post-mortem, dead body of his son were handed over to him. On inquiry he came to know that his son sustained bullet wounds at about 7:15 hours at Lane No: 05, Crystal Lights, Bukhari Commercial Phase VI, DHA, Karachi by **some unknown persons for an unknown reason** which lead to his son's death. After registration of FIR, investigation was handed over to SIO P.S Darakshan, who was on casual leave and therefore the investigation was passed to SIP Muhammad Ashraf Jogi, who Inspected the place of occurrence, prepared such memo in presence of SIP Arshad and H.C Safdar Hayat, took the photographs of place of occurrence, car of the deceased and also drew the sketch showing the actual location of place of police at the time of occurrence. He also collected CCTV/DVR record of the place of occurrence and obtained the photographs from CCTV/DVR recording. He arrested the accused involved in the instant case and interrogated them, to which they admitted their complicity in the instant occurrence. On 13.01.2018 accused Inspector Tariq Mehmood posted as SHO at ACLC recorded his 154 Cr.P.C statement in respect of the occurrence and arrested three of the police officials P.C Ghulam Abbas, P.C Fawad and H.C Shahid Usman along with weapons, used in the crime under memo and also dispatched Section 154 Cr.P.C statement to the concerned P.S for FIR. On 14.01.2018 at P.S Darakshan the accused P.I Azhar-ul-Hassan and P.I Tarique Mehmood deposited their official weapons along with live rounds, seized under memo by SIP Mir Hassan. On 14.01.2018 H.C Kamran posted as WHC at ACLC produced weapon of 9mm along with 15 live rounds, retained by accused PI Tarique Rahim to WHC which he produced before



SIP Mir Hassan, besides accused P.C Muhammad Daniyal and P.C Bilal Rasheed surrendered before him and disclosed their involvement in the instant occurrence, to which they were arrested under memo. He also recorded 161 Cr.P.C statements of witnesses, seized two Bikes and two cars from the place of occurrence under memo, obtained remand of the accused, dispatched the weapons and ammunition to the FSL for examination and report. He obtained FSL report in respect of weapons and ammunition dispatched to the FSL, issued letter to the SSP investigation-I for CDR record of cell phones retained by the accused and also issued letter to the DHA authorities for providing CCTV/DVR recording at the place of occurrence. He examined the complainant and recorded his further statement. On 16.01.2018 he went to the place of occurrence in order to search and collect the DVR, from the shop of Crystal Lights, DHA Phase-VI, Karachi, where at 2<sup>TM</sup> floor of the building the CCTV/DVR cameras were functioning. He collected the DVR from the said shop under the memo and also recorded 161 Cr.P.C statements of P.Ws and recorded interrogation form of each of accused. On 14.01.2018 and 15.01.2018 after arrest of the accused, prepared hulia form of each of accused, got examined car bearing No: BLE-254 white corolla Altis from FSL authorities, obtained report of FSL. He also issued letter to the MLO for postmortem and cause of death and letter to the Mukhtiarkar concerned for inspection and Preparation of Naksha-e-Nazri of place of occurrence. On 17.01.2018 accused Tariq Raheem after getting pre-arrest bail joined the investigation, whose statement was recorded. On 17.01.2018 investigation was handed over to SIO/Inspector Muhammad Naeem Awan after assuming the charge, who also interrogated the accused, during the interrogation accused became ready to voluntarily point out the place of occurrence. On such disclosure by all the accused PI Muhammad Naeem Awan inspected the place of occurrence pointed out by the accused and disclosed the material facts of occurrence, to which such memo were prepared, also recorded 161 Cr.P.C statement of previous I.O. Muhammad Ashraf, moved application to the police surgeon to provide postmortem No: 26/18 in respect of the deceased Intizar Ahmed S/o Ishtiaque Ahmed and obtained the same. After interrogation all the accused voluntarily became ready to point out the place of occurrence and on their lead he inspected the same under memo. He obtained FSL report in respect of weapons and ammunition, produced

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all the accused before the concerned office for CRO. On 20.01.2018 the investigation of the instant FIR were transferred vide order No: SP/INV/South/RDR/951/2018 dated: 20.01.2018 of IGP Sindh and was handed over to SP INV-I South namely Muhammad Farooque Awan, who notified DSP Fateh Muhammad and PI Muhammad Naeem to assist him in the investigation. On 22.01.2018 further investigation of instant FIR were transferred to CTD Sindh vide order No: 2936-42/AIGP/OPS/III/22.01.2018 marked to PI Aziz Ahmed Shaikh of CTD, who after delegation of investigation, interrogated all the accused, inspected the place of occurrence, prepared Naksha-e-Nazri and dispatched the clothes of deceased for chemical analyzer. He also recorded the statement of lady Mst. Madiha Kiyani, besides the friends of deceased, obtained the CDR pertaining to accused, lady Madiha and other persons. The Joint Investigation Team (JIT) were constituted to arrive at the just conclusion of the case, who also inspected the place of occurrence. He received 161 Cr.P.C statement of complainant through Whatsapp. He also contacted Muhammad Sohail on his Whatsapp No: 0018325810815, who informed that he and his daughter Mahrugh have migrated to America and submitted that he has no concern with the instant case. In this regard he confirmed such facts through FIA (Immigration). After completion of usual investigation he submitted report u/s: 173 Cr.P.C before the concerned Court. After the submission of challan cases were transferred to ATC-XIII for disposal according to law.

3. The accused persons plead not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 18 witnesses and exhibited various documents and other items. The statement of accused persons was recorded under Section 342 Cr.P.C in which they all denied the allegations against them and proclaimed their innocence. None of the appellants gave evidence under oath or called any DW in support of their defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against their convictions.

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6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. That although the cases of all the appellants are inter-connected we find that in effect the accused split into two distinct categories. The first category comprises appellants Daniyal and Bilal who deny their presence at the scene and have been accused of firing directly at Intizar Ahmed (the deceased) and thereby causing his death. The other category of accused admit their presence at the scene of the incident but claim that they played no role in the murder of the deceased which was carried out by appellants Daniyal and Bilal independently of them without their prior knowledge. According to learned counsel for the complainant this category also divided into a sub category consisting of the commanders on the ground at the time of the incident being appellants Tariq Mehmood, Tariq Raheem and Ahsan Azhar and the non commanders being appellants Shahid Usman, Fawad Khan and Ghulam Abbas. We do not consider that this sub categorization is of much assistance in deciding the case and will proceed to decide the same based on the two categories of the appellants who were allegedly at the scene and fired and the appellants who were allegedly at the scene but did not fire.

**With regard to the case of appellants Daniyal and Bilal.**

8. Learned counsel for the appellants Daniyal and Bilal contended that based on the particular facts and circumstances of the case the case did not fall within the purview of the ATA; that the appellants were completely innocent and had been falsely implicated in this case as due to the media attention the incident was receiving the police were in a hurry to solve the case and thus the higher ups of the police falsely implicated the appellants in order to show their efficiency and detract media attention from the police's involvement in the incident; that the appellants were not present at the time when the incident took place; that PW 10 Ms Madiha Kiyani who was present in the car with the deceased at the time of the incident did not identify the appellants as being the persons who fired upon the deceased or were even present and her evidence did not even support the prosecution case despite not being declared hostile; that the



empties which were allegedly recovered from the crime scene had not been kept in safe custody before being sent for FSL and that the pistols were not recovered from the appellants and that the FSL report whereby the empties had been matched with their recovered pistols had been manipulated; that no one had identified them as being present at the time of the incident; that the so called CCTV/DVR footage had not been kept in safe custody and had not been subject to forensic analysis and as such it could not be safely relied upon and as such for any or all the above reasons the accused should be acquitted of the charge by being extended the benefit of the doubt. In the alternative learned counsel for the appellants contended that if this court convicted the appellants the death sentence was not attracted as no motive had been either asserted or proven by the prosecution and at best it was a case of life imprisonment. In support of their contentions they placed reliance on the cases of **Ishtiaq Ahmed Mirza v Federation of Pakistan** (PLD 2019 SCMR 675), **The State v Ahmed Omar Sheikh** (2021 SCMR 873), **Khizar Hayat's case** (PLD 2019 SC 527), **Province of Punjab v Ahmed Omar Sheikh** (PLD 2018 SC 178), **Pakistan Engineering Consultants v Pakistan International Airlines Corporation** (PLD 2006 Karachi 511), **Muhammad Yousuf Khan Khattak v S.M. Ayub** (PLD 1973 SC 160), **Province of Punjab v Muhammad Rafique** (PLD 2018 SC 178), **Asfandiyar v Kamran** (2016 SCMR 2084), **Gohar Khan v The State** (2020 YLR 195), **Ghulam Hussain v The State** (PLD 2020 SC 61), **Farooq Ahmed v The State** (2020 SCMR 78), **Ali Gohar v The State** (PLD 2020 SC 427), **Muhammad Bilal v The State** (2019 SCMR 1362), **Amjad Ali v The State** (PLD 2017 SC 661), **Muneer Malik v The State** (2022 SCMR 1494), **Tariq Khan v The State** (2022 P Cr.LJ 558) and **Murad alias Mann v Manzoor Ahmed** (PLD 2022 Sindh 209).

9. On the other hand, learned Addl. Prosecutor General Sindh and learned counsel for the complainant have fully supported the impugned judgment and have in particular contended that the case fell within the purview of the ATA; that the FIR was filed with promptitude against unknown persons and as such there was no time for the police to cook up a false case against the appellants; that the CCTV/DVR footage clearly showed that the appellants were present at the scene at the time of the incident and it could be safely relied upon; that the empties recovered at the scene were kept in safe custody which lead to a positive FSL report when matched with the pistols which were recovered from each of the

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appellants; that the JIT report fully implicates the appellants in the crime and as such their appeals should be dismissed and the death sentence maintained in respect of each of the appellants as it was a cold blooded murder of a young man. In support of their contentions, they placed reliance on the cases of **Nazar Hussain v The State** (2012 P Cr. LJ 345), **Mehram Ali v Federation of Pakistan** (1998 SCMR 1156), **Jamat-i-Islami Pakistan and others v Federation of Pakistan and others** (PLD 2000 SC 111), **Mushtaq alias Shaman v The State** (PLD 1995 SC 46), **Muhammad Arshad v The State** (PLD 1996 SC 122), **Ch. Muhammad Yaqoob v The State** (1992 SCMR 1983), **Khushi Muhammad and another v The State** (1983 SCMR 697), **Takdir Samsuddin Sheikh v State of Gujrat** (2012 SCMR 1869), **Shahid Zafar v The State** (2015 P Cr.LJ 628), **Ali Raz alais Peter v The State** (2019 SCMR 1982), **Govt. of Sindh v Farad Naseem** (2002 P Cr.LJ 1765), **Shoukat Ali v The State** (PLD 2007 SC 93), **Haroon Rasheed v The State** (2005 SCMR 1568), **Muhammad Ashraf v The State** (2011 SCMR 1046) **Nizamuddin v The State** (2010 SCMR 1752), **Muhammad Hussain and another v. The State** (PLD 1971 Lahore 959), **Ghuncha Gul and another v. The State** (PLD 1959 (W.P.) Lahore 950), **Shahid Zafar and others v. The State** (2015 P. Cr.LJ 628), **Nawab Siraj Ali and others v. The State** (2020 P. Cr.LJ Note 94), **Nazar Hussain and another v. The State** (2012 P. Cr.LJ 345), **Shoukat Ali v. The State** (PLD 2007 Supreme Court 93), **Shamsher and another v. The State etc.** (1973 SCMR 69), **The State through Advocate-General Balochistan, Quetta v. Jamadar Muhammad Khan and another** (2005 P. Cr.LJ 1442), **Muhammad Arshad and 2 others v. The State** (PLD 1996 Supreme Court 122), an unreported judgment of Supreme Court of Pakistan dated 29.08.2014 in **(Criminal Appeals No.8-K to 11-K of 2014 Shahid Zafar and others v. The State)**, **Muhammad Shahid and another v. The State** (PLD 1963 Dacca 413), an unreported judgment of High Court of Sindh in **(Spl. Criminal A.T. Jail Appeal No.244 of 2019 and others dated 03.03.2022 Zahoor Khan and others v. The State)**, an unreported judgment of High Court of Sindh in **(Special Criminal A.T. Appeal No.159 of 2021 and Special Criminal A.T. Jail Appeal No.172 of 2021 dated 26.09.2022, Abdul Wasay Jokhio and Imtiaz Hussain v. The State)**, **Shahbaz Khan alias Tippu v. Special Judge, Anti-Terrorism Court No.3 Lahore** (PLD 2016 SC 1), **Jane Alam v The State** (PLD 1965 SC 640), **The State v. Sardar Ataullah Khan Mangal** (PLD 1967 SC 78), **Haroon Rasheed v. The State** (2005 SCMR 1568), **Shahid Isran v. The State** (2020 MLD 1599), **Ali Gul v.**

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**The State** (2012 P Cr. L J 559), **Munawar alias Mano David v. The State** (2020 YLR Note 106), **Naveed Iqbal v. The State** (2021 MLD 1562), **Gulshan Shaikh v The State** (2016 P Cr. L J 1860), **Ali Akbar v The State** (2013 YLR 1), **Ramnaresh & Others v. State of Chhattisgarh** (AIR 2012 SC 1357), **Fazal Haq v The State** (2014 YLR 2109), **Azeem Khan v. The State** (2016 SCMR 274), **Muhammad Shah Alam v. The State** (2020 P Cr.L J Note 163), **The State v Abdul Ghafoor Khan Niazi** (2000 P Cr. L J 7), **Tariq Khan v. The State** (2022 P Cr. L J 558), **Sh. Muhammad Abid v. The State** (2011 SCMR 1148) and **Hassan Bux v. The State** (2020 P Cr. L J Note 96).

10. We have heard the arguments of the learned counsel for the appellants Daniyal and Bilal as well as learned Additional Prosecutor General and learned counsel for the complainant and have gone through the entire evidence which has been read out by learned counsel for the appellants, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

11. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports including the post mortem report of the deceased, recovery of empties and car which the deceased was shot inside of at the crime scene we find that the prosecution has proved beyond a reasonable doubt that the deceased was shot and murdered by firearm on 30.01.2018 at about 1915 hours at lane No.5 near castle light Bukhari Commercial DHA Phase VI Karachi whilst driving his private car. In fact this seems to be an admitted position between the parties but what is at issue is whether appellants Daniyal and Bilal were present at the scene of the crime and fired at the deceased and caused his murder and with the other appellants although present at the scene of the crime whether they played any part in the murder being aiders and abettors or had any common intention with appellants Bilal and Daniyal to commit the murder of the deceased.

12. The only question left before us therefore is who murdered the deceased by firearm and whether those involved in the murder fell within the purview of section 34/109/113 PPC and Section 25 of the SAA 2013 at the said time, date and location?



13. Before determining this question we consider that a brief over view of the situation then prevailing on the ground in DHA Karachi would be of assistance. As conceded by PW 16 Muhammed Ashraf who was the first IO in this case during cross examination at the time of the incident the ACLC of whom the accused were members had information that a large number of vehicles were being snatched by culprits in the defence area and it was a fact that a gang of culprits used to commit the offence of snatching the vehicles by using white color grandy which was the same vehicle which the deceased was driving when it was signaled to stop. It has also come in evidence that the ACLC pursuant to written orders of SSP ACLC CIA Karachi were carrying out decoy operations. Although the decoys were ordered to be in uniform and police mobiles this does not make much sense as if you are trying to entrap a car snatcher by way of decoy he is going to come no where near you if you are in a police mobile or are in a police uniform which would explain why the accused were not in police uniform and not in police mobiles at the time of the incident. Even PW 18 Raja Mehmood supported this fact by conceding in cross examination that;

*"It is a fact that as per charge sheet No.64.2018 on 09.01.2018 SSP ACLC deployed the accused and other staff of ACLC under a scheduled program for checking and patrolling in the area to search gangsters involved in the snatching of cars and the status of the accused party was as a "DECOY" party and the said party were delegated to search the accused involved in snatching of the vehicles while riding white color grandee car with unknown registration number and the said party were in search of the said car".*

14. This position is also made clear in the S.342 Cr.PC statement of accused Tariq Raheem that since they were on decoy duty they were in a private vehicle and not in uniform and that appellant Bilal and Daniyal were not a part of their official team.

15. Thus, based on the above prevailing situation and orders we find that it was unexceptional for the accused ACLC party to stop the car which the deceased was driving whilst not being in uniform especially as it was the type of car which the car snatchers were driving and it appears that this is what happened. What we need to uncover from the evidence is why and who opened fire on the deceased which lead to his death whilst driving his car and what was the intention of all the accused.



16. At the outset we do not find that this case falls within the purview of the ATA as defined by a larger bench of the Supreme Court in the case of **Ghulam Hussain V State** (PLD 2020 SC 61) where in essence for their to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of such act. Whether people were terrorized as a by product of the act did not convert the act into one of terrorism nor the fact that it may have been of a particularly brutal nature. Based on the particular facts and circumstances of this case it appears that the intent of the appellants was to stop the deceased car and when he failed to stop some of the accused opened fire on the car of the deceased which lead to the death of the deceased and no witness even gave evidence that they were scared by this act except PW 10 Ms Madiha Kiyani in her personal capacity as she was sitting in the car of the deceased at the time when he was shot and murdered. The reality of the situation was that the police wanted to stop the deceased's car and in so doing fired at it which firing had no object, intent, purpose or design to create terror which was done only to stop the car and as such all the appellants are acquitted of all offences under the ATA.

17. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants Daniyal and Bilal only in respect of Section 302 (b) PPC and Section 25 SAA 2013 for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances and there convictions are upheld in respect of those offences.

(a) Although a Section 154 Cr.PC report or FIR is not a substantive piece of evidence it is notable that the first entry in respect of this incident occurred in daily dairy report No.30 at 2035 hours dated 13.01.2018 at PS Darakshan which reflected the Section 154 Cr.PC statement of accused Tariq Mehmood which stated as under;

*"From the spot,*

*Dt. 13.1.18 at 1940 Hrs.*

*Reference to the previous daily diary report No.13 of PS ACL, Karachi I SHO Inspector Tariq Mehmood posted at PS ACL Karachi alongwith staffers departed in connection with investigation of crimes, curbing of crimes and checking of pickets arrived at Khayaban-e-Bukhari, Phase-VI, DHA, Karachi where met with Inspector Tariq Rhaim and Inspector Azhar Ahsan present on duty posted at ACL, while the staffers namely 1) HC/22179/Shahid, 2) PC/2251 Fawad Khan, 3) HC/24689 Ghulam Abbas, PC/31892 Ghulam Abbas deputed with above Inspectors were on patrolling in vicinity streets on motorcycles for curbing of crimes. Because from some time, one white color Toyota Corolla Grande bearing No.987 has been noted in area of Defence that continuously many official*



number plates cars have been snatched away at the force of weapons from limits of different PSs, thus the aforesaid pickets have been established for anti-crimes. I alongwith other Inspectors were present on the spot that at 1915 hours, PC 22251 Fawad Khan informed on phone who attached with Inspector PI Tariq Rahim that the while color Toyota Corolla Car Grande bearing No.987 is parked in a suspicious condition near one official Toyota corolla car interior streets of Khayaban-e-Bukhari. On such information, I alongwith PI Tariq Rahim proceeded and other deputed officers by searching of a suspected car, in the meantime, found two white color cars in interior street to which we alongwith staffers wanted to intercept. During which, the accompanying staffers signaled to intercept a while color Toyota corolla Grande car bearing No.BLE-254 when staffers went near car but the said car started to run, meanwhile out of above stated staffers, 03 armed staffers and other PC/Bilal & PC/Daniyal suddenly appeared there who started firings upon the car in order to intercept, at which the aforesaid car driver accelerated car. During which I SHO alongwith officers loudly prohibited the aforesaid staffers from making fires but they did not pay any heed and then both constables Bilal and Daniyal fled away from there. While the aforesaid car ran towards Khayaban-e-Ittehad which was checked later on and found that people are shifting one injured citizen to hospital by ambulance. Meanwhile, arms and licenses of accompanying subordinates were taken into police possession and arrested them in offence U/s.80/319/34 PPC. My complaint is against the aforesaid 05 armed subordinates, they without orders of the higher officers, made firing upon suspected car driver due to not stopping, and have injured and killed driver of above car. Statement is submitted, legal action may be taken. (bold added)

Sd/-SHO/Inspector  
Posted at PS Tariq Mehmood  
Posted at PS ACL Karachi"

This was the first Section 154 report in respect of the incident and was **earliest in time** and ought to have been converted into an FIR which was not done for unknown reasons which would then have been investigated to get to the truth of the matter from all angles and there was no need for the FIR to be lodged by the complainant which eventually formed the basis of this case as was held in the case of **Sughran Bibi V State** (PLD SC 2018 595). In any event even at this **early** stage this first S.154 report implicates the appellants Daniyal and Bilal as firing on the deceased's car which lead to his death.

The FIR lodged by the complainant Ishtiaque Ahmed which became the subject of this case was lodged with promptitude within about 6 hours after the incident and any such delay has been explained as he had to attend the hospital where the deceased dead body was taken and be present for the post mortem report and thereafter recorded his FIR which is against unknown persons which indicates that he had no intention of falsely implicating any person as he did not know at that time who was responsible for the incident. This slight delay in lodging the FIR has therefore been fully explained and has not benefited the prosecution case or prejudiced the accused and as such is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872)



(b) We have not considered that JIT report as no member of the JIT produced it and as such the accused were not given the opportunity to cross exam any of the authors of it which caused prejudice to them. In any event the evidentiary value of a JIT report is no more than a S.173 report as was held in the case of **Province of Punjab v Muhammed Rafique** (PLD 2018 SC 178)

(c) We find that the strongest piece of evidence against the appellants and in fact is the main plank of the prosecution case is the CCTV/DVR/USB. The learned counsel for the appellants have urged that this piece of evidence be excluded as it has not been subject to safe custody or forensic analysis. We however have noted that the courts are more and more looking to and relying upon science and technology such as DNA testing, audio recordings, CDR data and media recordings in order to prove a case provided that such documents are found to be reliable. In this respect reliance is placed on the cases of **Ali Raza** (Supra), **Government of Sindh V Farad Naseem** (Supra), **Shahid Zafar** (Supra) and **Sikander Aki Lashari V State** (SBLR 2020 Sindh 981). The law needs to be dynamic and move with the times and rely upon innovative techniques. Earlier finger prints were used as reliable clues for identifying suspects today as science has evolved and the world has moved on DNA evidence is the preferred form of evidence in correctly identifying a suspect. As the world progresses and scientific and technological advancements are made these must be embraced by the courts. Ultimately, it is the public who must have both faith, trust and confidence in the courts and the criminal justice system and if we were to exclude reliable evidence which clearly implicates an accused and allows him to get away with his crime no doubt this would lead to a loss of confidence by the public in the judicial system so the courts should hold such evidence as admissible, even if only in a supportive/corroborative nature **provided that** holding such piece of evidence as admissible does not cause a miscarriage of justice. Furthermore, the persons who have obtained the CCTV/DVR and dealt with its processing and exhibited it in court have been examined by the prosecution and no defence counsel objected to it being exhibited at the time when it was exhibited. We have viewed the CCTV/DVR footage which was exhibited at trial along with the photo's which were exhibited which CCTV/DVR recording is time stamped which clearly shows the incident as narrated in the Section 154 Cr.PC statement of Tariq Mehmood, the FIR in this case and the evidence of PW 10 Madiha Kiyani which shows the accused stopping the white car, then letting it go and then the appellants Daniyal and Bilal firing at it. The PW's who produced this CCTV/DVR footage had no enmity with the accused and had no reason to tamper with it and indeed no suggestion of tampering was made by the defence counsel. As such we find this CCTV/DVR footage to be admissible in evidence and rely upon it. It clearly shows that all the accused including the appellants were present at the scene of the incident and that the appellants Daniyal and Bilal fired on the deceased car. In fact the checking of cars for car snatchers ties in with the whole of the prosecution case as mentioned earlier. We note that judgments of the Supreme Court have only prospective effect and as such we are not entirely bound by the case of **Ishtiaq Ahmed Mirza** (Supra) which came after this case and as such by exercising our judicial



discretion to do justice between the parties we have held the CCTV/DVR evidence to be admissible and rely on the same. In this respect reliance is placed on the case of **CP.No.127 of 2012 (regarding pensionary benefits of Judges of the Superior Courts)** (PLD SC 2013 829). With regard to the courts taking a dynamic approach to evidence and ignoring technicalities to reach the correct decision it was held as under by the Supreme Court in **Noor Muhammad v. State** (1999 SCMR 2722) which was also a grave criminal case involving kidnapping for ransom as under:-

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of **State through the Advocate General Sindh, Karachi v. Farman Hussain and others** (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-*

*(3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added).*

Such a dynamic approach to evidence whilst ignoring technicalities has also been held to be the correct approach in narcotic related cases. In this respect reliance is placed on **Ghualm Qadir V The State** (PLD 2006 SC 61) which held as under;

*"We are not agreeable with the contention of the learned counsel because fact remains that "Poppy Flowers" were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned counsel, would not be sufficient to acquit him. In addition to it in such-like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305)". (bold added)*

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In our view the law cannot be held hostage to technicalities when the evidence is reliable and by relying on it no miscarriage of justice has been caused to the appellants who in any event enjoy the golden principle of the benefit of the doubt. The law cannot be put in such a straight jacket by overly exclusionary rules especially in a developing country like Pakistan where the law which is also based on Islamic principles of justice should be adaptable to our own particular environment where investigative and prosecutorial training and resources for such training are limited. In Pakistan the law of evidence is based on the Quannon-e-Shahadat Ordinance 1984 which although exclusionary to a certain extent as per English common law it is **not** entirely so as in the doctrine of the fruit of the poison tree as in the United States of America. Although we do not have a civil system of law in Pakistan as in much of Europe which is inquisitorial based and not particularly exclusionary in nature as apposed to our adversarial system our law of evidence does seek to achieve justice between the parties.

**Significantly**, when the prosecution moved an application to have the CCTV/DVR forensically examined at the fag end of the trial the order dated 21.05.2021 passed by the learned trial court which is a part of the record in material part in so far as it relates to the defence counsel and the findings read as under which indicates that most of the defence counsel accepted the CCTV/DVR as in most of their cases it proved their presence at the scene carrying out their lawful duties which corroborated their own defence case so it is difficult to see why all the counsel for the appellants are objecting to its admissibility now at this belated stage;

*"The learned advocates for the accused vehemently opposed the application by agitating that none of the accused during investigation denied their presence at spot, rather they were in official duty, besides the CCTV recording were neither denied nor rebutted in either way during the course of performance of their duty at spot, thus the application in a form moved at this belated stage did not merits consideration, requires its dismissal. Mr. Syed Lal Shah, advocate for accused P.C Bilal Rasheed submitted that application in a form moved under the said act is not the mandate of this Court, rather the said Act has no nexus to the ATA, 1997, therefore requires its dismissal. According to learned counsel for accused Tarique Raheem, question in cross-examination were put with general perception of law, once fact is not denied it tantamount to have been admitted, therefore such*



questions with regard to the DVR were put in a broad spectrum of cross-examination and even did not deny documents placed on record by I.Os showing the presence of accused at spot with regard to their official duty, but not otherwise. More so, none of the accused in any manner placed any other defence with regard to the DVR and the source of cameras, thus question raised by the learned counsel for the complainant for sending the DVR to the forensic examination only on the ground that P.W 15 Imran Jahanzeb during his evidence were Suggested such questions for the DVR, did not appeal to the mind, thus application requires to be taken out of judicial consideration. Mr. Intikhab Ahmed learned counsel for accused Tarique Raheem submitted that application has been filed only to drag and prolong the Case, rather with intention only to fill up the lacunas, which is not the scheme of law. Ms. Tasneem Sultana, learned counsel for accused P.C Muhammad Daniyal submitted that application has been filed with sole intention to prolong and drag the matter as the accused are behind the bars since long. Mr. Zia Hussain Shah, learned counsel for accused H.C Ghulam Ahmed submitted that moving of such application at this stage, after closure of side by prosecution for its evidence, makes no sense as no legal provision permits to entertain such application, which requires to be dismissed out rightly. Mr. Abid Zaman, advocate for accused P.C Fawad Khan and Mr. Nasir Mehmood for rest of accused submitted that application requires to be disposed of as per scheme of law, but not otherwise. I have carefully considered the arguments and the material placed on record and after its perusal with careful consideration I have come to the firm opinion that the application in hand at this stage merits no consideration, cannot be permitted.

The reason for dismissal of such application is that I.Os of the case, during course of investigation collected said DVR and recording of CCTV camera which is not denied by the accused. It will not be out of place to mention here that I.Os during investigation also collected the record of deployment of police officials on the day of occurrence showing that they were in the area for performance of their duty, however this aspect could only be thrashed out at the time of final conclusion. So for the ground raised by the learned counsel for the complainant with regard to the genuineness and veracity of the recording lying in the DVR, neither the accused nor their advocates at the time of framing of charge denied out rightly nor at any stage afterwards, even none of the witness were suggested such fact, rather it tantamounts that said recording of CCTV has been taken into consideration as a part of investigation and factual aspects of case in hand. The question of sending of DVR to the Forensic expert could only arisen, in case the very factual aspect of the installation, recording and collection of DVR from said office is objected from its inception. Here in this case rather such recording were also released by the media channels at different intervals after the occurrence and anybody could get it by search. So for the plea raised by the learned counsel for the complainant that P.W-15 Imran Jahanzeb during cross examination were put such suggestions, suffice it to say that such questions could only



*be taken into consideration after perusal of his whole evidence, but not in isolation. In case such piece of evidence is only to be taken into consideration for the sending of DVR for its genuineness and veracity, the matter could get another turn, which is not the scheme of law".*

Thus, we find that it is proved that both appellants Daniyal and Bilal were present at the crime scene and that they out of the police party present only both opened fire on the car of the deceased which lead to the murder of the deceased. We shall now consider what other corroborative/supportive or other evidence links the appellants Daniyal and Bilal to the offence of murder.

(d) The evidence of PW 10 Madiha Kiyani fully corroborates the prosecution case and CCTV/DVR evidence without identifying any of the accused. In her evidence in chief she states as under in material part;

*"On the alleged day I was not feeling well and he(the deceased) called me that we will go for a drive and take something then he will drop me at home. Then we went to the Juice spot near Café Clifton, where we take juice and later on he told me that he will drop me at my home. It was magrib time, when we reached at Bukhari, he called his friend for meeting. I was not feeling comfortable, hence, I asked him do not call your friend and I do not want to meet with them. His friend came he took the drugs/Hashees from him and it was in knowledge of his father, it was not in my knowledge. Then we drove towards Ittehad commercial towards narrow streets he stopped the car. Where two other cars intercepted our car but I do not know who were in the said cars and Intazar stopped the car. I enquired from Intezar what happened. I was on the front seat in the car and in comfortable position. I see one person in front of car, who given the sign to go ahead, but I had not seen the person, I only seen his hand. I heard the commotion from back side of the car to stop this vehicle and I become afraid. Intezar stopped the car then accelerated car and moved fast, meanwhile gun fire started but I do not know whether the same were from side of the car or back side of the car. The deceased took the turn firing was started I was on the floor on the car. We cross the road. I told to Intezar to offer/recite the Kalama. The vehicle dashed with the footpath, after dashed with the footpath the car was not stopped and cross the road and wheel of the car hit to Gutter and then car was stopped. When car was stopped I called him (the deceased) but he did not reply. I took my CNIC and cell phone and came out from the car and checked my purse lying with me. My cell phone was lying on the seat of the car. I saw rickshaw standing there then I went to rickshaw and asked to rickshaw driver to go and told him that they shot my brother and they intent to shot me. I made call to Suleman and his mother picked the phone call and I intimated to her that some persons I do not know whether they are criminal or police official on which she told me that when Suleman came then she narrated him this fact." (bold added)*



The witness had no enmity with any of the accused and had no reason to implicate them in a false case or make up the incident. She gave her evidence in a straightforward manner and was not dented during cross examination and as such we find her evidence to be trust worthy, reliable and confidence inspiring and believe the same with respect to how the incident unfolded. Her leaving the car on a rickshaw is corroborated by PW 12 Syed Khalid Mehmood who was an independent witness and who had no reason to lie about this aspect of the case. The evidence of PW 10 Madiha Kiyani also provides us with an explanation as to why the deceased **sped off** after he was stopped. Namely that he had narcotics in the car and other number plates which lead to the police firing on the car. In her cross examination she states as under;

*"It is correct that the deceased used to change number plates of the vehicle owned by him. It is correct to suggest that the deceased had drugs in the car at the relevant time on which he accelerated the vehicle"*

The apparently unstable character of the deceased which might lead him to speeding away after being stopped by the police has also come in evidence in that he had already faced trial for reckless driving, he was seeing a psychiatrist over mental health issues who had already made a complainant against him and he was driving a car with tinted black glass which was illegal and at the time had a narcotic substance on him which would have got him into trouble if found by the police. It appears that the police initially let the car go because there was a man and women in it who were extremely unlikely to be car snatchers and they also did not have a lady PC with them for search purposes. However after letting the car go appellants Daniyal and Bilal tried to stop it and when it speed away they opened fire on the car in order to stop it keeping in view that they were not part of the ACLC checking party. **In any event such firing by appellants Bilal and Daniyal which lead to the murder of the deceased even if their order to stop the car had been disobeyed was completely unjustified and illegal. They ought to have chased down the car on their motor bikes without the need of firing a single round which was completely unnecessary and unjustified and lead to the murder of the deceased.**

(e) The next piece of evidence against the appellants Daniyal and Bilal is that they were not a part of the ACLC team on checking duty that night as actually they were the gunmen/guards of SSP ACLC who according to the evidence of PW 1 the complainant was annoyed a long with his family with the deceased's son trying to contact Marrook Sohail who was niece to the PA of the SSP who had an issue with the deceased. This was confirmed by PW 16 Muhammed Ashraf who was IO in the case that SSP ACLC Muqdas Hyder was annoyed with the deceased attempted relationship with his niece Marrook Sohail who left the country after the incident for America as per immigration records. Appellants Daniyal and Bilal were the guards/gunman of this SSP. In addition PW 12 Syed Khalid Mehmood Shah who was an independent PW heard the appellants state that their target had been achieved after the shooting. Perhaps they did the shooting to



ingratiate themselves with their SSP who had issues with the deceased over a family relationship. Accused Tarique Mehmood in his S.342 Cr.PC statement also confirms that appellants Daniyal and Bilal were not with him as part of his team and both joined him later in the evening and fired at the car of the deceased although he is a co-accused and his evidence needs strong independent corroboration which is provided by the CCTV/DVR footage which was played in court and which we have also reviewed and the pistols, empties and FSL report which were recovered and are discussed below.

(f) That the pistols recovered from appellants Daniyal and Bilal matched the empties recovered at the scene and the FSL report of all the weapons of all the accused found that **only** the pistols of Daniyal and Bilal had been fired and matched any empty. With respect to any delay in the sending of the empties and pistols for FSL we do not deem this to be of significance and in this respect reliance is placed on the cases of **Nizamuddin** (Supra) and **Muhammed Ashraf** (Supra)

(g) That the police PW's had no enmity or ill will towards the appellants and had no reason to falsely implicate them in this case by for example manipulating the DVR or FSL reports and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474).

(h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's and CCTV/DVR provides a believable corroborated unbroken chain of events from the appellants Daniyal and Bilal being present on the spot when the deceased car was signaled to stop to them opening fire on the vehicle once it started to speed away to the death of the deceased through fire arm injury to the recovery of the empties at the scene which matched the pistols recovered from appellants Daniyal and Bilal as per FSL report.

(i) That both the appellants Daniyal and Bilal took the defence that they were not present at the time when the incident took place and as such once they raised this specific defence they were under some obligation to prove it at least to a certain extent however the appellants produced no such evidence in support of this defence. In this respect reliance is placed on the case of **Anwar Shamim V State** (2010 SCMR 1971)

18. With regard to sentencing the appellants Daniyal and Bilal we find that the prosecution has neither asserted nor proved a motive as confirmed by the complainant; that it is unclear from the evidence (as we



excluded the JIT report) which of the two appellants fired the fatal shot; that the firing was not extensive in that the car only received three fire shots and the deceased was only hit by one fire shot. The superior courts have generally held one of these circumstances to be a mitigating factor in cases such as **Allah Dad** (Supra), **Muhammed Faisal** (Supra) and **Mst Nazi Anwar V State** (2018 SCMR 911) and since in this case three mitigating factors are present and the fact that it is better to preserve life if a few minor doubts arise over safe custody but are not enough to attract the benefit of the doubt as was held in the case of **Ghulam Mohy-ud-din V State** (2014 SCMR 1034) we hereby reduce the sentence of each of the appellants from death to Life imprisonment under S.302 (b) PPC with compensation payable of RS 1,00,000 each to the legal heirs of the deceased by each of the appellants. The appellant's convictions and sentences under S.25 SAA shall remain in tact as per the impugned judgment as it has been proven that it was the appellants through there licensed weapons which were used to murder the deceased. The appellants shall have the benefit of S.382 (B) Cr.PC and any remissions applicable under the law now that the appellants have been acquitted in respect of the offences under the ATA.

Turning to the case of the other appellants namely, **Tarique Raheem, Tariq Mahmood, Azhar Ahsan, Shahid Usman, Fawad Khan and Ghulam Abbass** who admit there presence at the crime scene.

19. Learned counsel for these appellants contended that they were completely innocent of any illegal actions and that they were simply performing there lawful duties as per orders of the SSP in acting as a decoy for persons snatching cars which was a major issue in the DHA area of Karachi as already discussed earlier in this judgment; that they all admit there presence at the scene of the crime; that the true perspective was set out in the diary entry 30 and S.154 Cr.PC statement earlier in time of Tariq Mehmood where he had even arrested three of the accused (Fawad, Ghulam Abbas and Shahid) and brought them and there weapons to the PS so that an impartial inquiry could be carried out in order to ascertain the truth; that he as unable to arrest appellants Daniyal and Bilal as they had fled the crime scene; that none of them discharged their weapons as per FSL report; that the CCTV/DVR was inadmissible in evidence and that the prosecution has failed to prove that they shared any



common intention to commit murder with appellants Daniyal and Bilal or that they aided and abetted appellants Daniyal and Bilal in the murder and as such for any or all the above reasons the accused should be acquitted of the charge by being extended the benefit of the doubt. In support of there contentions they placed reliance on the cases of **Shakeel and others v The State** (PLD 2010 SC 47), **Hasan Din v The State** (1978 SCMR 49), **Imam Bux v The State** (PLD 1983 SC 35), **Abdul Khaliq v The State** (2006 SCMR 1886), **Mursal Kazmi alias Qamar Shah v The State** (2009 SCMR 1410), **Ch. Muhammad Yaqoob v The State** (1992 SCMR 1983), **Abdul Subhan v Raheem Baksh** (PLD 1994 SC 178) **Province of Punjab v Muhammad Rafique** (PLD 2018 SC 178), **Waris Ali v The State** (2017 SCMR 1572), **Mitra Javanmardi v The State** (2020 SCMR 541), **Muhammad Alam v The State** (PLD 2010 Karachi 134), **Shamrzo Khan v The State** (1984 P Cr. L J 2599), **Sajjan Solangi v The State** (2019 SCMR 872), **Asfandiyar v The State** (2016 SCMR 2084), **Sardar Bibi v Munir Ahmed** (2017 SCMR 344), **Mst. Aziz Mai v The State** (2022 YLR 424), **Anwar Hussain v The State** (2019 YLR 1117), **Attaullah alias Qasim v The State** (2006 YLR 3213), **Kaleem Ullah v The State** (2018 YLR 2363) and **Muhammad Pervaiz v The State** (2019 YLR 2213), one unreported judgment of Hon'ble Supreme Court i.e. **Shakeel Ahmed v The State** passed in Cr. Appeal No.231 of 2022 and one of this Court namely **Muhammad Kamran @ Baba v The State** passed in Spl. Cr. AT Jail Appeals No.338 & 346 of 2018, **Shaukat Baig V Shahid Jamil** (PLD 2005 SC), **Sajjad Hussain V. The State** (2022 SCMR 1540) and **State & Others V. Azizullah & Others** (PLJ 2005 Cr. C 01)

20. With respect to these other appellants the learned APG and learned counsel for the complainant adopted the same arguments as for appellant Daniyal and Bilal and stressed that these other appellants aided and abetted and shared the intention of appellants Daniyal and Bilal to murder the deceased and were liable under S.34, 109, 113 and 300 PPC. They placed reliance on the same case law which they had cited earlier in this judgment.

21. After our reassessment of the evidence we find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellants **Tarique Raheem, Tariq Mahmood, Azhar Ahsan, Shahid Usman, Fawad Khan and Ghulam Abbass** for the following reasons keeping in view that each criminal case must be decided on its own



particular facts and circumstances and acquit them of the charge by extending them the benefit of the doubt:

(a) They did not deny their presence at the crime scene and instead took the stance that they were carrying out their lawful duties under the orders of the SSP ACLC as decoy for car snatchers. We have already held the CCTV/DVR footage to be admissible which shows the presence of the appellants at the scene however it does not show any of them holding a firearm let alone discharging a firearm unlike the case of appellants Bilal and Daniyal.

(b) Three of them (Fawad, Ghulam Abbas and Shahid) were immediately taken into custody by appellant Tariq Mehmood who lodged the **first entry and S.154 Report within about an hour of the incident** which left no room to cook up a false narrative which is the same narrative which he and the other appellants have stuck to throughout the trial. Appellant Tariq Mehmood was also arrested and none of these set of accused deliberately absconded unlike appellants Daniyal and Bilal who left the scene after the shooting and hence could not be arrested by appellant Tariq Mehmood.

(c) Their weapons when sent to FSL along with the recovered empties produced no match which proves that they did not discharge their weapons at the crime scene. The weapon of appellant Ghulam Abbas was not even found to be in working condition according to the FSL report.

22. With regard to S.300 PPC which is set out below for ease of reference;

[“300. Qatl-e-amd. Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, *or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.*]

At the outset based on the particular facts and circumstances of this case we find that the required ingredients of S.300 PPC have not been proven against the other appellants. These other appellants stopped a car which had tinted windows and was similar in nature to the car which they were looking for whose occupants were involved in car snatching. Thereafter they waved on the car. In so doing they were carrying out their lawful duty as per orders of their superiors which we have already discussed earlier in this judgment. Their act of stopping the car for checking purposes cannot be said as per their lawful duty as leading them to, *“have the knowledge that their act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.*]

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23. With regard to S.107 PPC concerning abetment is set out below for ease of reference;

"107. Abetment of a thing. A person abets the doing of a thing, who—

**First.**—Instigates any person to do that thing; or,

**Secondly.**— Engages with one or more other person or persons in any **conspiracy** for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

**Thirdly.**— **Intentionally aids, by any act or illegal omission, the doing of that thing.**

Explanation 1 —A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

In the case of **Sajjad Hussain** (Supra) it was held as under with regard to abetment;

*"So far as the allegation of abetment against the petitioner is concerned, perusal of section 107, P.P.C. reveals that three ingredients are essential to establish/charge any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment. However, all these three ingredients of section 107, P.P.C. are squarely missing from the record."*

Based on the particular facts and circumstances of this case we find that the required ingredients of S.107 PPC have not been proven against the appellants. This is because these appellants only stopped the car for checking as was there lawful duty keeping in view that the car had tinted glass and was the same model and colour as the car which the alleged car snatchers were using. The evidence on record (PW 10 Madiya Kiyani) suggests that after stopping the car they allowed it to go and then later the appellants Daniyal and Bilal fired on the car without being ordered to do so out of the blue. The appellants Danial and Bilal were off duty officers and were not a part of the checking team and arrived **after** the actual checking team had taken position so there act of firing can be seen in isolation of the other appellants. Under these circumstances it cannot be said that the other appellants instigated the firing on the car by appellants Daniyal and Bilal which lead to the death of the deceased. Like wise there is no evidence of any conspiracy between the appellants Daniyal and Bilal and the other appellants neither can such a conspiracy be inferred from the evidence because the appellants Daniyal and Bilal arrived alone being off duty and **later** joined the checking party which they were not a part of. There is also no evidence that the other appellants intentionally aided and abetted the murder by any act or illegal omission. In this case the other appellants carried out there duty as per law in stopping the suspicious car. There is no evidence that any of the other appellants gave firing orders to the appellants Daniyal and Bilal who acted alone in this respect. There was also no omission on the part of the other appellants. According to the



evidence **immediately after** the incident appellant Tariq Mehmood took three of the other appellants into custody whilst the appellants Daniyal and Bilal left the scene and **within about an hour of the incident** had made a diary entry and S.154 Cr.PC statement in respect of the incident under S.319 PPC which ought to have lead to an FIR being lodged to get the ball rolling in this case to find out the truth and who was actually culpable. According to the post mortem report of the deceased his death was instantaneous so there was nothing which could be done for him anyway. According to the S.154 Cr.PC statement appellant Tariq Mehmood gave orders to stop firing which has not been rebutted which order was most likely not heard by appellants Daniyal and Bilal over the noise of the firing. It has also not been disputed that he did not return to the scene of the crime to assist after lodging the FIR and as such no case of abetment has been proved beyond a reasonable doubt.

24. S.109 PPC only sets out the punishment for abetment which is not relevant to the instant case as we have found that the offence of abetment has not been proved to the required standard.

25. With regard to S.113 PPC concerning abetment which is set out below for ease of reference;

**"113. Liability of abettor** for an effect caused by the act abetted different from that intended by the abettor. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, **provided he knew that the act abetted was likely to cause that effect.**"

Based on the particular facts and circumstances of this case we do not find section 113 to be applicable to this case as it concerns the liability of an abettor and in this case we have already found that the other appellants are not abettors.

**Even otherwise**, by stopping the car as per there lawful orders, as will be discussed later in this judgment in respect of S.34 PPC, the other accused could **not have known** that after the car was indicated to move on that the appellants Daniyal and Bilal who were **not** a part of there group of ACLC officers on checking duty being the gunmen of SSP ACLC who were both off duty and arrived later would have fired on the car.

26. With regard to S.34 PPC which is set out below for ease of reference;

**"34. Acts done by several persons in furtherance of common intention.** When a criminal act is done by several persons, in furtherance of the common intention of all, each



of such persons is liable for that act in the same manner as if it were done by him along."

In the case of **Shakeel** (supra) the prerequisites of common intention was set out as under;

"6. After having gone through almost entire law qua the provisions as contained in section 34, in our considered view the following are the prerequisites of the section 34 before it could be made applicable:

- (a) It must be proved that criminal act was done by various persons.
- (b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.
- (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuance whereof.
- (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.
- (e) The real and substantial distinction in between 'common intention' and 'similar intention' be kept in view.

7. We have examined the case of appellant on the touchstone of criterion as discussed hereinabove and in the light of evidence which has come on record. No evidence worth the name could be led showing that there was a prior concert of mind or planning qua commission of alleged offence. The proclaimed offenders Istikhar and Shahzad fired upon Nasir Mahmood and Muhammad Hussain which resulted into death of Nasir Mahmood and injured Muhammad Hussain who later on succumbed to the injuries. **The prosecution has failed to prove that the appellant had any knowledge about the incident what to say about the prior concert of mind and planning. Being driver of the car the appellant cannot be held vicariously liable for the commission of alleged offence in the absence of any specific role attributed to him qua facilitation or abetment. The learned High Court has relied upon the motive without having taken into consideration that Istikhar P.O. had nourished grudge and enmity against the complainant party as his brother Akbar was killed and in retaliation whereof he had burnt the house of complainant party. The appellant had no concern whatsoever with the said dispute. The factum of absconsion has also been taken into consideration by the learned High Court which alone is not sufficient to award conviction under section 302, P.P.C. as it is just a corroboratory piece of evidence".** (bold added)



With regard to common intention it was held in the case of **Shoukat Ali V State** (PLD SC 2007 93) as under;

*"We would like to discuss the import and objects of section 34, P.P.C. The main object for the enactment of section 34 is to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing the act. The nature of the offence committed by an accused depends upon the act done by him and the effect produced by it, and the sole object- of this section is to lay down what act will be deemed to be done by the conspirators. This section is not a punitive section and does not enact a rule of evidence but enacts a common law principle of substantive law' 1935 Cr.LJ 1393, 1953 all. 214. **"This section embodies the common-sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually. If two or more persons combine in injuring another in such a manner that each person engaged in causing the injury must know that the result of such injury may be the death of the injured person, it is no answer on the part of anyone of them to allege and perhaps prove that his individual act did not cause death, and that by his individual act he cannot be held to have intended death. Everyone must be taken to have intended the probable and natural results of the combination of acts in which he joined. All are guilty of the principal offence, not of abetment. But a party not cognizant of the intention of his companion to commit murder is not liable, though in his company, to do an unlawful act."** In re Basappa (Vol 51 Cr.LJ 1950). **"common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either 1 from conduct or from circumstances or from any incriminating facts. The leading feature of this section is the element of participation in action. It embodies a principle of joint liability in the doing of a criminal act and the essence of that liability is the existence of a common intention."** (bold added)*

Again with regard to common intention in the case of **Muhammed Arshad v State** (PLD 1996 SC 122) it was held as under;

*"The essence of liability envisaged under this section lies in the existence of a common intention and to*



attract the application of this provision, it has to be shown that the criminal act complained of was done by one of the accused in furtherance of common intention of all. Now the intention is a state of mind which is not susceptible of direct proof and can only be inferred from the attendant circumstances of the crime. A priori, the existence of common intention which usually consists of motive, pre-content and pre-arrangement cannot always be proved by direct evidence. In some cases, direct evidence such as confessions or testimony of approver may be available to prove the common intention but in most of the cases, it has to be gathered from the facts disclosed in evidence and surrounding circumstances of the case. Refer "*Khushi Muhammad and others v. The Crown*" 1969 SCMR 599 wherein the contention that in the absence of any direct or circumstantial evidence to show previous concert or arrangement between the accused-appellants, inference of a common intention was not justified, was repelled and it was observed, "intention is a mental condition and has often to be gathered from the facts and the surrounding circumstances. One cannot always expect direct evidence to be forthcoming on a matter of this nature". Similar view was expressed by the Federal Court in an earlier case "*Bahar v. Crown*" reported in PLD 1954 FC 77.

12. Viewed in the light of the aforesaid principles, section 34, P.P.C. is fully attracted to the facts of the present case. From the evidence brought on the record, it is quite clear that all the three appellants, who are real brothers, had a common motive/grievance against the deceased for his having constructed or attempting to construct a wall on a piece of land which the appellants claimed was part and parcel of the plot owned by one of them. It is also in evidence that on the day of the occurrence, all the three appellants came to the spot together, two of them were armed with guns and the third was having a knife with him and on reaching the spot, they asked the deceased whether he would settle the dispute about the land or not. On the latter's reply that they should bring Anwar, the Property Dealer who would decide about the dispute, the appellants told him that they would take the land from him whereupon Afzal appellant raised Lalkara and grappled with the deceased. As stated above, Arshad appellant then fired at the deceased who fell down and later expired. He also gave a blow with the butt of his gun at the head of Mst. Irshad Begum wife of the deceased. Afzal and Akram appellants did not lag behind and fully participate in the occurrence. On the facts found by the Courts below, Akram fired at the deceased's daughter Mst. Naseeb Akhtar which hit her leg and he also gave a blow on her head with the butt of his gun. Afzal too gave a knife blow at the back of Mst. Surrya



*Akhtar, another daughter of the deceased. The evidence on record quite clearly shows the appellants came fully prepared and with common intention to take the land in dispute from, the deceased forcibly. In the overall circumstances, we are satisfied that the act of firing by Arshad appellant at the deceased was in furtherance of common intention fully shared by Afzal and Akram appellants. They were, therefore, rightly held vicariously liable for the murder of Khadim Hussain deceased. Their conviction under section 302/34, P.P.C. is thus not open to any exception".*

Again with regard to common intention it was held in the case of **Hasan Din (Supra)** as under;

*"In our view the learned counsel has misconceived the correct application of section 34, P.P.C. The mere presence of a person on the spot does not necessarily attract section 34, P.P.C. This section is not to be applied lightly, particularly in acquittal cases. Vicarious liability cannot be visited unless there is some strong circumstances to show common intention. In view of the foregoing discussion, we think Bashir respondent has been rightly given the benefit of doubt". (bold added)*

Again with regard to common intention the governing legal principles were well set out in the recent Supreme Court case of **Bashir Ahmed v State (2022 SCMR 1187)** which essentially emphasized the above mentioned legal principles.

(d) That appellants Bilal and Daniyal were not a part of this group of appellants who were legally on duty for car checking as per orders of the SSP as discussed earlier in this judgment. Appellants Bilal and Daniyal being guards of the SSP who were off duty came to the scene separately and who might have had an axe to grind with the deceased. Co-accused Tarique Mehmood in his S.342 Cr.PC statement also confirms that appellants Daniyal and Bilal were not with him as part of his team and that they alone fired on the deceased's car as is corroborated/supported by the CCTV/DVR. The prosecution has not produced a shred of evidence to prove that these appellants shared the intention of appellants Daniyal or Bilal to kill the deceased. These other appellants had absolutely no ill will or enmity with the deceased and had no reason to kill him. If they would have shared such common intention these other appellants would also have opened fire on the deceased's car which they did not. In fact it appears from the CCTV/DVR footage that these other accused did not even draw their weapons when they stopped the car and after it started to move away. It appears from the evidence that the car was initially stopped and then let go by these appellants and then attempts were again made by appellants Daniyal and Bilal to stop the car again which started to speed away and who then opened fire on it which lead to the death of the deceased. Based on the evidence on record and the particular facts and circumstances of this case we also find



that no inference can be made that this set of appellants shared the intention of appellants Daniyal and Bilal to fire at the deceased car and kill the deceased. We also find that most of the perquisites to prove common intention as held in **Shakeel's case** (supra) have not been satisfied in the case of these other appellants let alone murder u/s 302 PPC.

We appreciate that common intention can often only be inferred from the evidence as often there is no direct evidence of the same but in this case we find that no such inference can be drawn from the evidence in respect of the other appellants. In fact the early diary entry at PS Darakshan of the incident and S.154 Cr.PC statement of appellant Tariq Mehmood **which was made within about an hour of the incident** whereby he implicates 5 of his party indicates that these appellants did not have the same intent as appellants Bilal and Daniyal who disappeared from the crime scene after shooting at the car of the deceased or otherwise these appellants would also have disappeared and no entry or S.154 Cr.PC Statement would have been made by appellant Tariq Mehmood especially as there is no evidence that they knew of any working CCTV/DVR camera's in the area and in the absence of any eye witnesses would have had no reason to attempt to cover there tracks by lodging a false S.154 Statement. It also cannot be inferred from the evidence that any of these appellants had any intention to kill the deceased or even assist the appellants Daniyal and Bilal in the crime. These appellants simply carried out there orders of checking for car snatches as a decoy as per orders of the SSP as mentioned earlier in this judgment and were in plain clothes and unmarked vehicles as the only commonsense way of acting as decoys for the car snatchers. If all of the appellants had opened fire on the deceased then this might have been a case of common intention however this was not the case. These other appellants cannot be saddled with the individual separate independent actions of appellants Daniyal and Bilal of shooting at the car and murdering the deceased when they had no idea that the appellants Daniyal or Bilal intended to open fire on the car which might have been in reaction to it speeding away when it failed to stop on their (Daniyal and Bilal's) command. Appellants Daniyal and Bilal were not part of the ACLC team on duty like the other appellants who cannot be held responsible for the actions of two rogue officers whose intent they did not share. Even if it is believed (and no evidence has come to the contrary) as per the entry and S.154 Statement of Tariq Mehmood that he ordered the firing to stop he would not have been heard over the fire shots especially as PW 17 Naeem states that the firing took place at about 30 to 40 feet from the car which is evident from the CCTV/DVR footage. With regard to appellant Tariq Mehmood and the others leaving the scene this has been explained by appellant Mehmood as he had arrested 3 of his team who he had taken to the PS for lodging the FIR whilst the other appellants left at the scene fled and by the time Mehmood returned the public had gathered and were already shifting the accused to hospital. The independent PW's at the crime scene after the firing had already taken place indicate that many people had gathered around who included police officers one of whom might have been appellant Mehmood who returned to the scene after arresting 3 of his colleagues and lodging the entry and S.154



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Statement at PS Darakshan. The prosecution has brought on record no evidence to the contrary although in our view the better option would have been for appellant Mehmood to attend to the injured deceased by calling an ambulance(although as per post mortem he had died instantaneously) and then arrest those concerned and make his entry and FIR. We appreciate however that in times of high tension, trauma and relative chaos each individual may act differently.

(e) That when the defence case of these appellants who admit their presence at the scene of the crime and carrying out their lawful duties of attempting to catch car snatchers when the two appellants Bilal and Daniyal opened fire on the deceased through an independent action as supported by the CCTV/DVR footage is placed in juxta position with the prosecution case we find some merit in it and it cannot be simply brushed aside which warrants these appellants being acquitted by being extended the benefit of the doubt especially as the first diary entry in respect of this incident and first S.154 Cr.PC statement as mentioned earlier were lodged by appellant Tariq Mehmood supports the defence case of these appellants although not a substantive piece of evidence Tariq Mehmood's S.154 Cr.PC statement can still be relied on for corroborative purposes as was held in the case of **Muhammed Akram V State** (20006 SCMR 1567) and is fully corroborated/supported by the CCTV/DVR evidence. Simply because the other appellants were present at the time of the incident does not lead to them automatically becoming liable for common intention or abetment with the appellants Daniyal and Bilal who individually and without their knowledge carried out the crime. This doubt in the prosecution case raised by the defence case would entitle the appellants to be acquitted based on the benefit of the doubt as was held in the case of **Raza v State** (PLD 2020 SC 523). Notably the appellants are entitled to the benefit of the doubt as a matter of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345).

#### **In conclusion.**

(a) All the appellants are acquitted for offences under the ATA.

(b) Appellants Daniyal and Bilal are convicted u/s 302 (b) PPC and are sentenced to life imprisonment with the confirmation reference being answered in the negative in respect of each of them. They shall each pay a fine of RS 100,000 to the legal heirs of the deceased u/s 544-A Cr.PC and in default of doing so they shall undergo SI for one year more. Both the appellants Bilal and Daniyal's convictions and sentences under S.25 SAA are maintained. Both the convictions shall run concurrently and both the appellants shall have the benefit of S.382 (B) Cr.PC and any remissions applicable under the law now that they have been acquitted of the ATA



offences.

(c) Appellants Tarique Raheem, Tariq Mahmood, Azhar Ahsan, Shahid Usman, Fawad Khan and Ghulam Abbass are acquitted of the charge, there appeals are allowed and they shall all be released unless wanted in any other custody case.

27. The appeals are disposed of along with confirmation reference in the above terms.